



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sophia Homes Ltd. and [tenant name  
suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 56;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:43 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by agent FH (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on September 23, 2021, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on September 28, 2021, in accordance with section 90(a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

The landlord submitted a written request for amendment to claim for unpaid rent and utilities and requested at the hearing to amend the application. Per rule of procedure 10.7, expedited hearings may only be amended at the hearing.

Residential Tenancy Branch Rules of Procedure Rule 4.2 provides:

In circumstances that can reasonably be anticipated, **such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made**, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.”

**(emphasis added)**

In this matter, the Notice of Dispute Resolution served by the landlord requested an order for the early termination of the tenancy. I do not find that the tenant could reasonably have anticipated that the landlord would amend the application at the hearing to include a claim for compensation for unpaid rent and utilities and, as such, I deny this request.

At the outset of the hearing the landlord stated that she applied on August 20, 2021 for an order of possession (the prior application), on September 09, 2021 the landlord submitted this application, the prior application hearing was on September 21, 2021 and the landlord received the order of possession on September 22, 2021. The tenant moved out on September 23, 2021 and did not provide her forwarding address.

The application for an order for early termination of a tenancy is moot since the tenancy has ended.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the landlord’s application.

The landlord submitted this application on September 09, 2021, before the prior application hearing. The landlord must bear the cost of the filing fee.

### Conclusion

I dismiss the landlord’s application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 13, 2021

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Residential Tenancy Branch